

Message Text

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E.O. 11652: GDS

TAGS: UN, PFOR, PINS

SUBJECT: AD HOC COMMITTEE ON TAKING OF HOSTAGES

1. PURSUANT TO ROSENSTOCK/SCHWEBEL TELECON, WE AGREE THAT GENEVA CONVENTIONS (GC) AND PROTOCOLS APPLY IN THE TERRITORIES OF PARTIES TO AN ARMED CONFLICT AND IN OCCUPIED TERRITORY BUT NOT IN OTHER PLACES. WHILE THIS IS NOT CLEAR IN ARTICLE 2 OF GC IV, IT IS CLEAR IMPLTCAION FROM ART 6, AS WELL AS FROM ART 3(B) OF PROTOCOL I TITLE OF SECTION I OF PART III OF GC IV ALSO MAKES THIS CLEAR. THUS, AN EXCEPTION TO HOSTAGES CONVENTION BASED ON GENEVA CONVENTIONS (GCS) AND PROTOCOLS APPARENTLY WOULD NOT HAVE EFFECT OF NEGATING APPLICATION OF HOSTAGES CONVENTION IN SITUATIONS THAT OCCUR IN COUNTRY THAT IS NOT A PARTY TO
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THE ARMED CONFLICT.

2. UNDER GENEVA CONVENTIONS, TAKING HOSTAGE A PROTECTED PERSON (SEE ART 4 GC IV FOR DEFINITION OF "PROTECTED PERSON") IS EXTRADITABLE OFFENSE SINCE IT IS A "GRAVE BREACH" UNDER ARTICLES 146 AND 147. FOR PERSONS WHO ARE NOT PROTECTED, ARTICLE 75 OF PROTOCOL I MAKES TAKING

HOSTAGES ILLEGAL, THOUGH NOT AN EXTRADITABLE OFFENSE UNDER THE GC. IN NON-INTERNATIONAL CONFLICTS, ART. 3 OF GCS AND 4 OF PROTOCOL II HAS SAME EFFECT AS ART 75. HOWEVER, COUNTRY OR GROUP RELYING ON NLM PROVISIONS IN PROTOCOL I WOULD THEREBY ASSERT THAT CONFLICT WAS INTERNATIONAL IN CHARACTER, WHICH LOGICALLY SHOULD RESULT IN HOSTAGE-TAKING OF NON-NATIONAL BEING AN EXTRADITABLE OFFENSE, SINCE GCS AND PROTOCOL SPECIFY THAT HOSTAGE TAKING IS A GRAVE BREACH AND EXTRADITABLE.

3. WHILE WE WOULD WISH TO REVIEW PRECISE LANGUAGE OF EXCEPTION TO HOSTAGE CONVENTION, WE BELIEVE A FORMULATION THAT CLEARLY PROVIDES THAT HOSTAGES CONVENTION APPLIES UNLESS THE PARTICULAR RPT PARTICULAR INCIDENT IS COVERED BY GENEVA CONVENTIONS AND/OR PROTOCOL I WOULD BE ACCEPTABLE. VIRTUALLY EVERY COUNTRY IS A PARTY TO GC. THIS WOULD ENSURE APPLICATION OF EITHER HOSTAGE CONVENTION OR GENEVA LAW TO ANY HOSTAGE CASE.

4. THESE PROVISIONAL CONCLUSIONS HAVE NOT BEEN FULLY CLEARED AND ARE SET UPON BY WAY OF INTERIM GUIDANCE. THEY DO NOT ADDRESS THE SEVERE OPTICAL DIFFICULTIES GIVEN US BY ANY APPARENT EVEN IF NOT LEGALLY SUSTAINABLE EXCEPTION IN FAVOR OF NLMS. VANCE

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